



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS COURT

AT MOMBASA

CAUSE NO. 558 OF 2016

JULIUS MALUSI MUSYOKA.....CLAIMANT

VERSUS

READY CONSULTANCY COMPANY LIMITED.....RESPONDENT

R U L I N G

1. The claim herein was instituted vide a Memorandum of Claim dated 20/7/2016 and filed in Court on the same date. The Respondent filed a Response to Claim on 30/11/2017, and thereafter pleadings closed pursuant to Rule 13(4) of the Employment and Labour Relations Court (Procedure) Rules, 2016 which provides:-

“the pleadings in a suit shall close fourteen days after the service of a reply under paragraph (3) or, where a reply is not filed, fourteen days after service of a response to pleadings under paragraph (1).”

2. The Claimant did not file a reply to the Respondent’s Response to claim filed on 30/11/2016. Pleadings therefore closed fourteen days after 30/11/2016.

3. Rule 15(1) of the Employment and Labour Relations Court (Procedure) Rules, 2016 provides:-

“the parties to a suit shall, within fourteen after the close of pleadings or such other period as the Court on application may direct, move the Court to hold a scheduling conference to ascertain:

- (a) points of agreement and disagreement.***
- (b) the possibility of alternative dispute resolution or any other form of settlement.***
- (c) whether evidence is to be oral or by affidavit.***
- (d) whether legal arguments shall be written or oral, or both.***
- (e) the estimated length of the hearing and***
- (f) any other matters the Court may deem necessary.”***

4. Record herein shows that on 5/9/2016 (before closure of pleadings) the Claimant’s advocates attended the Court’s Registry and fixed the case for mention on 7/10/2016. The Court’s record does not contain any proceedings for 7/10/2016.

5. Again, on 15/6/2017, the Claimant’s advocates attended the Court’s Registry and fixed the suit for mention on 21/7/2017. The Court’s record does not contain any proceedings for 21/7/2017.

6. Thereafter, no action was taken on the suit until 23/6/2021 when the Court issued a written notice to the parties herein under Rule 16 of the Employment and Labour Relations Court (Procedure) Rules, 2016, calling upon them to attend Court on 14/7/2021 and show cause why the suit could not be dismissed for want of prosecution.

7. When the matter came up for Notice to Show Cause on 14/7/2021, Counsel for the Claimant requested for, and was granted, seven days to

respond to the Notice to Show Cause, and the matter was fixed for mention on 29/7/2021. The Claimant's response to the Notice to Show Cause is shown to have been filed on 29/7/2021. The matter was then fixed for mention on 13/10/2021 for further directions.

8. On 13/10/2021, the Respondent's Counsel urged the Court to dismiss the suit for want of prosecution, while Counsel for the Claimant urged the Court to rule on the issue based on the affidavit filed by them in response to the Notice to Show Cause.

9. I have perused and considered matters deponed to in the Replying Affidavit of **Benjamin A. Amadi Advocate sworn on 29/7/2021** and filed in Court on the same date. The deponent of the said Replying Affidavit lists a total of ten (10) dates on which he alleges that the suit came up in Court and failed to take off due to reasons enumerated in paragraph 6 of the said affidavit. The dates listed are:

- (a) 30th May 2017
- (b) 21st July 2017
- (c) 22nd September 2017
- (d) 16th February 2018
- (e) 28th June 2018
- (f) 20th September 2018
- (g) 29th October 2018
- (h) 25th October 2019
- (i) 27th November 2019
- (j) 9th March 2020.

10. Other than 21st July 2017 which is mentioned in paragraph 5 of this Ruling, none of the above listed dates appears anywhere in the Court's record. **The Court's record does not contain any recording on fixing of those dates, either at the Court's Registry or by the Court, and does not contain proceedings of the Court taken on the dates when the suit is alleged to have come up in Court and failed to take off.**

11. Rule 16(1) of the Employment and Labour Relations Court (Procedure) Rules, 2016 provides:-

“in any suit where no application has been made in accordance with Rule 15 or no action has been taken by either party within one year from the date of filing, the Court may give notice in writing to the parties to show cause why the suit should not be dismissed and if no reasonable cause is shown to its satisfaction, may dismiss the suit.”

12. The Claimant has not shown reasonable cause why the suit herein should not be dismissed for want of prosecution. For the last five years, the suit herein has been lying in the Court's Registry unprosecuted and without efforts by the Claimant to prosecute it. Put differently, the suit has simply been part of daily statistics of case backlog in the judiciary. This must not continue.

13. Consequently, the suit is hereby dismissed for want of prosecution. No orders as to costs.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 4TH DAY OF NOVEMBER 2021

AGNES M.K. NZEI

JUDGE

ORDER

In view of restrictions on physical Court operations occasioned by the COVID-19 Pandemic, this ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of Court fees.

AGNES M.K. NZEI

JUDGE

Appearance:

Mr. Amadi for Claimant

Mr. Birir Respondent